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C O N F I D E N T I A L SECTION 01 OF 03 KUALA LUMPUR 000106

SIPDIS

FOR EAP/MTS AND INR

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SUBJECT: EMPHASIS ON ANWAR CASE SHIFTS FROM COURTROOM TO
FOREIGN OFFICIALS

REF: KUALA LUMPUR 95 -- FIRST WEEK OF ANWAR TRIAL

Classified By: Political Counselor Brian D. McFeeters for reasons 1.4 b
and d.

Summary

¶1. (SBU) The emphasis of Anwar Ibrahim's sodomy trial shifted from the courtroom to international reaction, as a host of Malaysian government officials and politicians denounced a February 11 statement by Australian MP's condemning the trial while issuing frank messages to stay out of this internal Malaysian matter. Malaysian officials responded with a more tempered tone to U.S. Senator John Kerry's February 17 comment urging the GOM to ensure a fair trial for Anwar, via press statements rather than directly to Embassy officials. The trial itself briefly resumed on February 18 after a six day hiatus for the judge to announce his decision to not recuse himself, prompting an automatic appeal and an adjournment of the trial proper until March 25. End Summary.

Anwar's Trial Delayed Again

¶2. (SBU) Opposition leader Anwar Ibrahim's trial was adjourned on February 12 after Anwar's defense team filed an application for Judge Mohamad Zabidan Mohd Diah to recuse himself, following allegations of bias stemming from Zabidin's failure to cite a government-owned newspaper for contempt, or, at a minimum, warn it for factually inaccurate reporting. Judge Zabidan--who decides his own recusal at this stage of the application--resumed court on February 18, ruling that he has not shown bias and that the trial should continue. The defense was then prepared to cross examine witness/accuser Saiful, but this came to an abrupt halt when the prosecution cited a case law indicating that an appeal over failed applications of recusal is mandatory. This forced Judge Zabidan to delay the trial until March 25, so that the Court of Appeals can consider the defense's recusal application.

¶3. (C) Comment: It is noteworthy that the request to delay the trial came from the prosecution. The defense had initially asked for the trial to resume immediately, since there were allegations in the media that the defense was stalling for time; it was only when the defense surprisingly requested that the trial resume immediately and called witness Saiful to the stand that the prosecution requested a delay. Independent bloggers and analysts, most of whom are skeptical of the trial, speculated that the prosecution was not expecting Saiful to be cross-examined that day, and that the primary witness was not mentally prepared for the

grilling Anwar's defense team would have given him. The government-influenced media has subsequently been reporting that this newest five-week delay in Anwar's trial is due to Anwar's defense team. When the trial resumes in late March, it will likely begin with Anwar's defense team cross-examining Saiful. End Comment.

Anwar's Lawyer Implicates PM Najib, Wife Rosmah

¶4. (U) During a short break in the courtroom on February 19 while the judge was in chambers, Anwar's chief lawyer Karpal Singh -- a prominent leader in the opposition Democratic Alliance Party (DAP) and one of Malaysia's most famous attorneys -- called the trial a "persecution rather than a prosecution", and added that "There is a black hand at play. Let me correct myself -- there is not one black hand, but two, namely (Prime Minister) Najib and (Najib's wife) Rosmah." Malaysia's two leading independent online news portals, the Malaysian Insider and Malaysiakini, both ran Karpal's comments as a story, but government-influenced media sources did not.

Australian MP's Send Letter of Concern; Backlash Follows

¶5. (U) A group of 50 Australian MP's sent a letter dated February 11 to the Malaysian High Commissioner in Australia expressing concern over Anwar's trial. The text follows:

Dear High Commissioner,

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We write to you with regards to the trial of Anwar Ibrahim which is currently taking place in Kuala Lumpur.

We members of the Australian parliament believe Malaysia is an important country, an emerging power in our region, and a friend of Australia. However the trial of Anwar Ibrahim raises serious concerns for us.

While Australia and many other countries no longer have laws against sodomy we respect the right of Malaysia to determine what should be its laws relating to personality morality.

Of more serious concern however is the fact that this trial is taking place at all, particularly given the testimony of Munawar A. Anees in the Wall Street Journal. We understand that the U.S. State Department has urged Malaysian authorities to resolve this matter in a manner that builds confidence in the impartial rule of law in Malaysia, and we agree with this sentiment. Many friendly observers of Malaysia find it difficult to believe that a leading opposition voice could be charged with sodomy a second time, and so soon after his party made major gains in national elections. It should be made known to the Malaysian Government, that in our opinion, global esteem for Malaysia will be affected by these charges against Mr. Anwar. We hope that Malaysia's authorities will not pursue these charges.

Signed,

Members of the Australian Parliament"

(Note: Names of 50 signatories followed. End Note and Statement.)

¶6. (SBU) The statement by the Australian MP's was widely denounced by GOM supporters, culminating with a protest held at the Australian High Commission on February 17. Prime Minister Najib stated on February 14 that he had ordered his Ambassador to Australia to explain the "real situation" to the MP's, adding that "I don't think they know the real situation." Trade Minister Mustapa Mohamad said that the Australians "should respect our country's sovereignty" and

that "the world needs to evaluate Anwar's case through Malaysia's lens and not their own liberal views."

17. (SBU) The February 17 protest, led by UMNO Youth Chief Khairy Jamaluddin and Malay rights group Perkasa chief Ibrahim Ali, drew several hundred supporters. Australian High Commissioner Penny Williams personally received the leaders and formal statement of protest. In a lengthy written statement signed "on behalf of Barisan National (BN) Youth and other Malaysian youth organizations present," the BN claimed to be "shocked" at the "disregarding of the rule of law and trampling upon the sacred principle of sovereignty that governs relations between states." The BN statement added that "the trial of a Malaysian -- in a Malaysian court under Malaysian law -- falls completely within the sphere of Malaysia's domestic jurisdiction." The BN statement also slammed "the insinuation that the charges against Anwar Ibrahim were concocted to advance the political goals of the Barisan National federal government", calling it "an unwarranted and extremely reckless charge that sets a dangerous precedent for international relations." The BN statement demanded that 1) the signatories immediately retract the letter; 2) that the signatories issue an unequivocal apology for disrespecting Malaysia's rule of law and sovereignty, and for suggesting that the GOM is interfering with the judicial process; and 3) Australian PM Kevin Rudd should issue a statement reproaching the actions by the 50 MPs, and reaffirm Australia's respect for Malaysia's rule of law and sovereignty.

18. (C) Poloff spoke with Dr. Katey Mead, a political officer in Australia's High Commission to Malaysia, on February 19 regarding the recent letter and protests. Mead told Poloff that her government's official position on Anwar has been to take a "wait and see" approach to the trial before making a decision on whether or not to express concern, noting that they routinely send diplomatic observers as well as two Australian attorneys from the International Bar Association to observe the proceedings. Mead said that despite the letter and protests, their position has not changed, and that her embassy has subsequently made it clear that the letter is

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from the MPs in their individual capacity and not an official position of the Australian government. She added that there are no plans by her government to issue an apology or admonish the MPs.

Senator Kerry's Statement and Responses

19. (U) Senator John Kerry released the following statement on Anwar's trial on February 17:

"I call on the government of Malaysia, and specifically on Prime Minister Datuk Seri Najib Razak, to ensure a fair and equitable resolution of the legal proceedings currently under way against former Deputy Prime Minister Anwar Ibrahim.

It has been over a decade since Anwar's first trial, on charges that were later overturned by the Federal Court. The current charges closely mirror the ones levied years ago, and have been brought soon after Mr. Anwar's resumption of his role as elected Member of Parliament and leader of the parliamentary opposition. I urge the Malaysian government to accord Mr. Anwar every legal protection to which he is entitled as a Member of Parliament and as a citizen -- and to settle his case in a manner that builds confidence in the impartiality and credibility of the Malaysian judicial system."

10. (SBU) Foreign Minister Anifah Aman, speaking to reporters in direct response to Senator Kerry's statement, stated on February 18 that Malaysia was committed to upholding the rule of law, and that the judiciary operated according to the standards of any fully developed country. He noted that "our

system has the obligation to proceed with this trial, not because the accused is a prominent figure, but because it has the responsibility to protect all Malaysians under the law." He added that "our system honors and respects the independence of our courts to find facts and to apply the law impartially," adding that an important aspect of Malaysia's judicial system was the simultaneous presumption of innocence until proven guilty, while concurrently protecting the rights of the accuser and the accused. UMNO Youth Leader Khairy noted that unlike the Australian statement, Kerry's comments did not cross the line. Khairy said that they were "two different things," noting this was primarily because the Australians insinuated that "the charges were politically motivated." Khairy noted that Kerry's call for a fair resolution of the trial reflects the wishes of the Malaysian public. Government owned newspaper Bernama reported on February 18 that Malaysia Ambassador to the U.S. Jamaluddin Jarjis, currently in Malaysia, also weighed in. According to Bernama, he said that the U.S. government has never interfered in the sodomy trial of Anwar Ibrahim, adding that Senator Kerry's statement did not reflect the stand of the White House.

KEITH